

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE

September 26, 2001 Session

**PHILLIP COLDWELL v. HARTFORD CASUALTY INS. CO.**

**Direct Appeal from the Circuit Court for Hamblen County  
No. 99-CV-370 John K. Wilson, Judge**

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**No. E2000-02950-WC-R3-CV - Mailed - November 9, 2001  
FILED: DECEMBER 12, 2001**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The trial court found the plaintiff had sustained an accidental injury and awarded the plaintiff the replacement cost of his prosthetic foot. We reverse the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court is Reversed**

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which E. RILEY ANDERSON, J. and ROGER E. THAYER, SP. J., joined.

Lynn C. Peterson, Knoxville, Tennessee, for the appellant, Hartford Casualty Insurance Co.

Jana Durham Terry, Morristown, Tennessee, for the appellee, Phillip Coldwell.

**MEMORANDUM OPINION**

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). Questions of law are reviewed *de novo* without a presumption of correctness. *Peace v. Easy Trucking Co.*, 38 S.W.3d 526 (Tenn. 2001).

**Facts**

The plaintiff, who was injured in a 1979 motorcycle accident, has an above the knee

prosthesis. On December 28, 1998, the plaintiff was working for the defendant's insured. He had just dismantled a tow motor and taken a step when he heard a popping, breaking sound and the flex foot section of his prosthesis broke. The plaintiff had to leave before his shift ended in order to seek a replacement prosthetic foot, but he was able to return to work the next day. He suffered no injury to any other part of his prosthetic leg or to his body and suffered no pain when the prosthesis broke.

Mr. Terry Parsons of Morristown Orthotics and Prosthetics testified that he examined the flex foot and found no visible signs of wear and tear in the foot. Mr. Parsons also testified that in May of 1998, he had recommended the entire above the knee prosthesis be replaced. He testified his recommendation was based on Medicare guidelines regarding the anticipated life of a prosthetic device as well as the fact that the plaintiff had been experiencing problems with the hydraulic knee. Mr. Parsons also stated the normal life of a prosthesis varies from person to person. The prosthesis at issue in this case was fitted on February 9, 1994, as a replacement for the original, post-accident prosthesis. The plaintiff's health insurance denied the May 1998 claim for the cost of a replacement prosthesis.

The trial court found the plaintiff had sustained an accidental injury and awarded the plaintiff the replacement cost of the prosthetic flex foot system. We reverse the judgment of the trial court.

### **Discussion**

The defendant argues that Tennessee's workers' compensation law does not permit recovery of the replacement cost of the plaintiff's prosthetic foot.

In order to be eligible for workers' compensation benefits, an employee must suffer "an injury by accident arising out of and in the course of employment which causes either disablement or death." TENN. CODE ANN. § 50-6-102. Injury includes whatever lesion or change in any part of the system that produces harm or pain or a lessened facility of the natural use of any bodily activity or capability. *Fink v. Caudle*, 856 S.W.2d 952 (Tenn. 1993). Tennessee case law traditionally follows the premise that some bodily harm resulting from a physical cause must be proven before the "injury" requirement is satisfied. See T. Reynolds, *Tennessee Workers' Comp. Prac. and Proc.*, (4<sup>th</sup> ed.) §8-1.

The question of whether a plaintiff may recover the replacement cost of an artificial member when the accident that damaged the artificial member does not also cause physical injury is one of first impression in this jurisdiction.

Generally, in the absence of an express statutory provision that allows compensation for injuries to artificial limbs or members,<sup>1</sup> such injuries are not compensable. 9 Couch on Insurance

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<sup>1</sup> Jurisdictions with such statutes include: *Alaska Stat.* §23.30.395(17); *Cal. Lab. Code* §3208; §287.020(3); *Ind. Rev. Stat.*; *KRS* 342.0011(1); *R.S. Mo.* (1999); *Miss. Code Ann.* § 71.3-3 (2000); *N.C. Gen. Stat.* §97-2-(6); *N.D.*

3d §136:57; 3 A. Larson, *Larson's Workers' Compensation Law* §55.03 (2000) (“Apart from special statute, injury to an artificial limb or member is not a personal injury.”).

However, when the same accident that damages the appliance also causes physical injury, compensation, even in the absence of a specific statutory provision equating damage to the appliance with personal injury, has been found possible. 3 A. Larson, *Larson's Workers' Compensation Law* §55.04 (2000). Such was the case in *Downs v. The American National Fire Insurance Co.*, 1992 WL 159895 (Tenn.). In *Downs*, the plaintiff suffered a fracture of an elbow prosthesis that caused immediate pain and the necessity for surgery to repair/replace the prosthesis in order to prevent further damage to the plaintiff's arm. The *Downs* court held the defendant “liable for the medical expenses incurred as a result of [the] injury including restoring and replacing the prosthetic appliance in [the plaintiff's] elbow. *Id.*”

In the absence of a specific statutory provision that provides for compensation for damage to artificial members or appliances unaccompanied by physical injury, we are compelled to reverse the judgment of the trial court.

Finally, the plaintiff's request for attorney fees is not well taken because provision for such fees under the Workers' Compensation Act is conditional; the plaintiff must be found to have suffered a compensable work-related injury. In this case, the plaintiff's injury is not a compensable work-related injury; therefore, attorney fees are not appropriate.

The cost of this appeal is taxed to the plaintiff.

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JOHN K. BYERS, SENIOR JUDGE

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AT KNOXVILLE, TENNESSEE

**PHILIP COLDWELL V. HARTFORD CASUALTY**  
**Hamblen County Circuit Court**  
**\_\_\_\_\_ No. 99-CV--370 \_\_\_\_\_**

**No. E2000-02950-WC-R3-CV - Filed: December 12, 2001**

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**JUDGMENT**

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the plaintiff, Phillip Coldwell, for which execution may issue if necessary.

12/12/01



